

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

KEVIN P. WALKER and
ANGIE WALKER

PLAINTIFFS

v.

Civil No. 05-5203

DEPUTY JOE POWELL,
BENTON COUNTY, ARKANSAS
SHERIFF'S DEPARTMENT, in
his official and individual
capacities

DEFENDANT

O R D E R

Now on this 5th day of May, 2006, comes on for consideration defendant's **Motion To Dismiss** (document #2), and from said motion, and a review of the pleadings, the Court finds and orders as follows:

1. Plaintiffs filed this suit on December 20, 2005, alleging that defendant, acting in both his individual and official capacities, committed a violation of their constitutional rights by stopping them, and arresting Kevin Walker, on or about December 21, 2002.

2. Defendant contends that, insofar as he is sued in his official capacity, plaintiffs' claims against him must be dismissed pursuant to **A.C.A. §16-56-109**, which provides that "[a]ll actions against sheriffs . . . upon any liability incurred by them by doing any act in their official capacity . . . shall be brought within two (2) years after the cause of action has accrued and not thereafter."

3. Because the Complaint was filed more than two years after the actions complained of, and because **A.C.A. §16-56-109** is applicable to deputy sheriffs as well as sheriffs, **Brown v. U.S.**, **342 F.Supp. 987 (E.D. Ark. 1972)**, **affirmed in relevant part, reversed in part, 486 F.2d 284 (8th Cir. 1973)**, the Court agrees that plaintiffs' claims against defendant in his official capacity should be dismissed.

IT IS THEREFORE ORDERED that defendant's **Motion To Dismiss** (document #2) is **granted**, and plaintiffs' claims against defendant - in his official capacity only - are hereby **dismissed**. Plaintiffs' claims against defendant in his individual capacity remain pending for trial.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE